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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PRINCIPAL LIFE INSURANCE  
COMPANY,

Plaintiff,

vs.

VINA CUESTA STATUA, INOCENCIO  
S. AMBE, CORAZON AMBE  
CABALES, ESTELA D. REED, and  
DOES 1-10,

Defendants.

ESTELA D. REED,

Cross-claimant,

vs.

VINA CUESTA STATUA, INOCENCIO  
S. AMBE, and CORAZON AMBE  
CABALES,

Cross-defendants.

Case No. C-07-4915 CW

MEMORANDUM IN SUPPORT  
OF MOTION FOR THE COURT  
ENTRY OF DEFAULT OF  
INOCENCIO S. AMBE ON  
CROSS-CLAIM OF ESTELA  
D. REED



MULTIPLE SERVICE ON INOCENCIO S. AMBE

**1. Summons on Complaint and Complaint**

PRINCIPAL LIFE served the defendant by **Federal Express**, and filed a proof of service with this Court on December 18, 2007 showing service of the summons and complaint, and other related documents, on INOCENCIO S. AMBE. (Request for Judicial Notice, Proof of Service, Docket Entry 21) A further proof of service was filed by PACIFIC LIFE showing the Federal Express tracking of the documents, and that the **documents were actually delivered and sign for on December 22, 2007.**

Notwithstanding, no answer or appearance has been filed by the defendant AMBE.

**2. Summons on Cross-Claim and Cross-Claim**

On December 20, 2007, Montie S. Day, attorney for REED caused the summons on the cross-claim and the answer and cross-complaint to be deposited for delivery by United Parcel Service for INOCENCIO S. AMBE in the Phillippines. The UPS Tracking Confirmation also shows that the **package containing the summons and complaint was delivered and signed for on December 27, 2007.** (See Request for Judicial Notice, Proof of Service, Docket Entry 25 and Declaration of Montie S. Day filed herewith)

Notwithstanding, no answer or appearance has been filed by the defendant AMBE.

Thus, AMBE has been served twice by deliveries tracked and signed for, one, by Federal Express the summons on the complaint and complaint and, two, by UPS the summons on the cross-claim and the cross-claim. Delivery was verified in both cases by the tracking confirmation.

**SERVICE UNDER RULE 4(f)**

*Federal Rules of Civil Procedures, Rule 4(f)(2) (C)(ii)* provides that service be effected by "any form of mail requiring a signed receipt."

**Federal Express** constitutes "mail" as at least one court within this Circuit has considered **Federal Express** to be a form of "mail" for purposes of *Rule 4*. See, e.g., *R. Griggs Group Ltd. v. Filanto SPA*, 920 F. Supp. 1100 (D. Nev. 1996) (implicitly concluding

1 that **Federal Express** was a "postal channel" for purposes of analyzing whether service was  
2 proper under the Hague Convention); cf. *Dee-K*, 174 F.R.D. at 379 (finding DHL courier to  
3 be a form of mail requiring a signed receipt).

4 There is no reason that Federal Express, or DHL, delivery with tracking and  
5 verification of delivery by signature could be sufficient by United Parcel Service, providing  
6 the identical service, would be insufficient.

7 While *Griggs Group Ltd. v. Filanto SPA*, 920 F. Supp. 1100 (D. Nev. 1996) involved  
8 a "Hague Convention" country, the analysis for a non-Hague Convention analysis should be  
9 the same. The fact is that the defendant AMBE has been given sufficient and reasonable  
10 notice such that the service upon him should be sufficient, especially where the "Res", the  
11 property deposited with the Court, is within the jurisdiction of this Court. Accordingly, this  
12 Court should find that AMBE, a resident of the Philippines, was served the summons and  
13 complaint on the cross-claim filed herein pursuant to *Federal Rules of Civil Procedures Rule*  
14 *4(f)* and such service is legally sufficient in that the Philippines is not a signatory of the  
15 ("Hague Convention") and the service is reasonably calculated to provide notice to the  
16 defendant of the pending action and to provide the opportunity to respond to the instant  
17 action, and that the defendant INOCENCIO S. AMBE has failed to file an answer or  
18 otherwise appear in the action. A copy of the case of *Griggs Group Ltd. v. Filanto SPA*, 920  
19 *F. Supp. 1100 (D. Nev. 1996)* is attached hereto as Exhibit A for the convenience of the  
20 Court.

21 Accordingly, while the Clerk of the Court cannot enter the Default, it is respectfully  
22 submitted that the Court may find the service sufficient and enter the default of Mr. Ambe.

23  
24 Date: March 10, 2008

DAY LAW OFFICES

/s/ Montie S. Day

26 BY: \_\_\_\_\_

27 Montie S. Day, Attorney